

**OPINION
45-307**

April 5, 1945 (OPINION)

VETERANS

RE: Laws Giving Preference To

You have requested my opinion as to the legal significance of Senate Concurrent Resolution No. 16 which was adopted by the Twenty-Ninth Legislative Assembly, and which in effect directs that when university and school lands are sold at public sale, a veteran may purchase by paying \$5.00 more than the highest bidder.

The sale of school lands is controlled by Section 11 of the Enabling Act, Section 158 of our State Constitution and by the statutes embodied under chapter 15-06 of the North Dakota Revised Code of 1943 (sections 15-0601 to 15-0621 inclusive).

Section 15-0610 reads as follows:

The highest bidder for any tract of land offered for sale under this chapter shall be declared the purchaser thereof. The purchaser of lands shall pay one-fifth of the price in cash at the time of sale and the remaining four-fifths shall be paid as follows: one-fifth in five years, one-fifth on or before the expiration of ten years, one-fifth on or before the expiration of fifteen years, and one-fifth on or before the expiration of twenty years, with interest at the rate of not less than three percent per annum, payable annually in advance. If the purchaser fails to pay the amount required to be paid at the time of the sale, the commissioner or other person conducting the sale shall re-offer the tract for sale immediately, but no bid shall be received for the tract from the person failing to pay as aforesaid. Any person refusing or neglecting to make such initial payment after purchase shall forfeit the sum of one hundred dollars for each tract purchased by him."

A concurrent resolution is not a law. Section 58 of our State Constitution provides:

No law shall be passed, except by a bill adopted by both houses, and no bill shall be so altered and amended on its passage through either house as to change its original purpose."

It is, therefore, plain that such resolution cannot modify nor amend any provision of the statutes. In other words, the board of university and school lands cannot conform to the procedure for the sale of school lands set forth in Senate Concurrent Resolution No. 16 if such procedure conflicts with the Constitution or if it involves a departure from the procedure prescribed by chapter 15-06 of the North Dakota Revised Code of 1943.

Senate Concurrent Resolution No. 16 merely has the effect of advising the board of university and school lands that it was the opinion of the Legislative Assembly that the procedure set forth therein for the sale of school lands should be followed as a matter of policy.

Corpus Juris discusses "Resolution" in the following language:

RESOLUTION. According to ordinary parliamentary practice, it is merely a suggestion or direction in writing, concurred in by the two houses of the assembly, if there be two houses, or passed by one house if there be but one and not submitted to the executive for approval, ordinarily passed without the forms and delays which are generally required by constitutions and municipal charters as prerequisites of the enactment of valid laws or ordinances. The term has been defined as a formal expression of the opinion or will of an official body or a public assembly adopted by a vote; a mere expression of the opinion or mind of the council concerning some matter of administration coming within its official cognizance; merely the form in which the legislative body expresses an opinion; an agreement to a law or other thing adopted by a legislature or popular assembly; the determination or decision with regard to its opinion or intention of a deliberative or legislative body, public assembly, town council, board of directors, or the like; also a motion or formal proposition offered for adoption by such a body; a measure required by law to complete legislation. The term has been held equivalent to a 'motion,' or an 'ordinance'; and it has been distinguished from a 'bill,' 'law,' 'order,' and also 'ordinance.'" (54 Corpus Juris, p. 720-721.)

When a tract of land has been struck off to the highest bidder under the provisions of section 15-0610, the sale has been completed. Such tract of land cannot then be sold to a veteran who merely stand by until the bidding has been completed and then offers \$5.00 more than the highest bidder. The only method by which the procedure suggested in Senate Resolution No. 16 can conceivably be followed is for the auctioneer to keep the bidding open and when bidding has ceased ask whether a veteran is present who will offer \$5.00 more. But in the event that such an offer is made by a veteran, any other person may again offer a higher bid, for the land must be sold to the highest bidder. In other words, the sale would then become a contest between the so-called highest bidder and the veteran. It is, therefore, quite evident that any procedure adopted by the board in an effort to comply with the provisions of said Senate Concurrent Resolution may result in confusion and in sales of doubtful validity.

I have made reference to Section 11 of the Enabling Act under the terms of which North Dakota was admitted as a state to the union. Said section provides that all lands granted to the state for educational purposes shall be disposed of only at public sale. When the State of North Dakota adopted its constitution in 1889, it did by the terms thereof enter into an irrevocable compact with the United States by which the State of North Dakota and its

people bound themselves to all of the provisions and covenants embodied in the Enabling Act. If, therefore, the state, through the land department, would undertake to dispose of public granted lands in the manner proposed in Senate Concurrent Resolution No. 16, such procedure would be in direct violation of Section 11 of the Enabling Act, which provides that such lands shall be disposed of only by public sale.

A public sale is exactly what it means--a sale to the highest bidder and, as I have pointed out, if the sale is closed and a parcel of land is struck off to the highest bidder, the sale could not be reopened for the benefit of a serviceman without also extending the same opportunity to other bidders.

We are all anxious to give every advantage possible under the law to the men and women who have served in the armed forces of the United States, and it is only just proper that we should do so, but I am satisfied that none of the men and women who served in the armed forces would ask for or expect any advantages which is not within the provisions of law, notwithstanding the well-intentioned patriotic zeal manifested by the members of the Legislative Assembly for the benefit of returned veterans. These men have been fighting fairly upon the battlefield to preserve the liberties and the institutions of our country, and they are asking nothing but fair play in seeking such opportunities as may be open to them for securing means of livelihood and establishing homes.

NELS G. JOHNSON
Attorney General